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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,175	10/12/2001	Richard H. Balmer	A148 1610.1	2853

7590

08/01/2003

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EXAMINER
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LAM, CATHY FONG FONG

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 08/01/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/977,175

Applicant(s)

BALMER ET AL.

Examiner

Cathy Lam

Art Unit

1775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23<sup>rd</sup> June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 19-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 19-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

***Claim Rejections - 35 USC § 112***

1. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is vague and indefinite as to which "particles" is the applicant referring to in claim 1 (ie. the pigmented particles, the transparent particles or the translucent particles)?

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Drout et al (US 5084501).

Drout discloses a highly filled PVC resin composition comprised of 95wt% of filler particles and resin particles. Drout's resin composition is for use in the resilient flooring field.

The filler particles have larger size than the resin particles (col 4 L 3-6). The resin particles which has smaller size particles are coated onto the surface of the relatively larger filler particles (col 3 L 42-48).

Drout teaches that the filler particles are limestone, aluminum trihydrate and quartz, etc. these materials are well known as opaque materials. The resin particles

are dispersion grade PVC resin which conventionally is transparent (col 3 L 50-53 & L 61-65).

The examiner takes the position that the filler particles resemble the pigmented particles and the resin particles resemble the transparent or translucent particles.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8 and 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drout et al (US 5084501) in view of Lussi et al (US 5290591).

Drout teaches a resilient flooring material comprised of a powdered highly filled PVC resin. The powdered highly filled PVC resin is comprised of a larger size filler particles (as a bottom layer) and a smaller size PVC resin particles as a surface layer (col 3 L 42-47 & L 37-39).

Drout does not teach the relative thickness of the filler and resin particle layers nor does it mention the filler particles are pigmented or having any design or pattern effect. Drout does not explicitly state the resin particles are transparent or translucent or the degree of transparency.

Lussi discloses a decorative inlaid flooring material comprised of a substrate, a printed layer and an adhesive matrix layer, all in the named order.

The adhesive matrix layer consists of a plastisol layer and a dense loading of transparent and/or translucent and colored spheroidal particles. The particles range from about 0.004 inches to about 0.04 inches. Such matrix layer is applied over the printed pattern so as to let the underprint show through to generate a unique visual effect (col 4 L 42-47).

The transparent and/or translucent particles are PVC resin particles (col 5 L 3-5). The colored spheroidal particles contain colorant, dye or pigment and can be materials such as mica, ceramic, metals, rubbers, polymer and resin compositions (col 9 L 27-32, L 38-39).

In view of the prior art teachings, one skill in the art would fabricate a three dimensional thermoplastic rod that comprised of pigment particles layers and transparent or translucent particles layer as disclosed by Drout because it is known to put one particles layer over another particle layer. Furthermore, one skill in the art would choose a desired degree of transparency, thickness and design because these are a matter of design choice.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cathy Lam whose telephone number is (703) 308-2418. The examiner can normally be reached on 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (703) 308-3822. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

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872-9604 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
Cathy Lam  
Primary Examiner  
Art Unit 1775

cfl  
July 26, 2003